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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| AT&T Request for Declaratory Ruling |) | NSD File No. L-01-112 |
| and Clarification of Changes to the |) | CC Docket No. <u>95-155</u> / |
| Toll Free Number Administrative |) | DA 01-1463 |
| System |) | |

Comments of Coalition for Open Market Policy

The Coalition for Open Market Policy,¹ by its attorneys, hereby submits its Comments in response to the Commission's June 22, 2001 Public Notice² in the above-captioned matter. As set forth below, the problems AT&T presents in its Request for Declaratory Ruling and Clarification ("Request") highlight but a few of the many practical difficulties businesses have encountered as a result of the Commission's rules prohibiting the open market transfer of toll-free telephone numbers. The Coalition supports the repeal of these regulations as the most effective remedy for dealing with these issues, and urges the Commission to address immediately numerous petitions for reconsideration in this proceeding which have been pending for over three years. Alternatively, and at a minimum, the Coalition urges the Commission to rescind the December 7, 2000 letter ruling by the Chief, Network Services Division, Common Carrier Bureau to Database Service

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¹ The Coalition for Open Market Policy is a coalition of small Responsible Organizations, toll free number service providers and their customers.

² Public Notice, DA 01-1463, released June 22, 2001.

Management, Inc. ("DSMI")³ and clarify that certain transfers of toll-free numbers between subscribers are permissible even under existing regulation.

I. The Commission's Prohibition Against Open-Market Transfers Should Be Repealed

In its Petition, AT&T faults the Bureau for misinterpreting the Commission's rules, and attributes its current business problems to the directives in the *Bureau Letter*. While the Coalition concurs with this assessment to a degree, it is plain that the difficulties which toll free number providers confront in effectuating legitimate number transfers are manifold, and are a direct consequence of the rules themselves.

Plainly, AT&T is not the first party to bring these problems to the Commission's attention. Since the Commission adopted its toll-free number transfer prohibition in 1997,⁴ numerous entities, including the U.S. Small Business Administration, have petitioned for modification, or repeal, of the Commission's rules, citing the practical difficulties they present for legitimate business transactions.⁵ Still others, including one Commissioner, have noted how the prohibition against open market number transfers deprives legitimate subscribers of any meaningful legal recourse when their numbers are wrongfully taken.⁶ The

³ Letter from L. Charles Keller, Chief, Network Services Division to Michael Wade, President, Database Service Management, Inc., *Modifying SMS/800 Disconnect and Suspend Status Functions to Preclude Transfers of Toll-Free Numbers Directly Between Subscribers*, DA 00-2754, released December 7, 2000 ("*Bureau Letter*").

⁴ *Toll Free Service Access Codes*, 12 FCC Rcd 11162 (1997).

⁵ See, e.g., Petitions for Reconsideration of Office of Advocacy, U.S. Small Business Administration, filed December 12, 1997; TLDP Communications, Inc., filed May 27, 1997; Sprint Communications, filed May 27, 1997; Tellnet Communications, filed May 22, 1997; Mark D. Olson, filed May 6, 1997; National Association of Telecommunications End-Users, filed May 22, 1997; Supplemental Petition for Reconsideration of TLDP Communications, filed June 26, 1998.

⁶ See, e.g., Dissenting Statement of Commissioner Harold Furchtgott-Roth to Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 95-155, *Toll Free Service Access*

problems cited by petitioners were only exacerbated once the Commission adopted its first-come, first-served system of number allocation. More than four years later, these petitions remain pending before the Commission, although the problems they raise remain as pressing as before.

Among the difficulties petitioners have presented are the following:

- The Commission's blanket prohibition of the possession of multiple toll free numbers "ignores pro-competitive business realities and the existence of a necessary, well-established and burgeoning secondary market for small businesses" and is especially burdensome on small businesses.⁷
- The Commission's prohibition of number transfers leaves subscribers who wrongfully lose their numbers without realistic legal recourse. The prospect that a subscriber that loses its number will be able to retrieve it presently hinges on the vagaries of the first-come, first-served number allocation system. Open market transfers are the only feasible means of redressing the harm which incumbent subscribers have suffered as a result of the total failure of DSMI to open new codes in conformance with the Commission's mandate.⁸
- The Commission's prohibition impedes the ability of telemarketers to exchange or acquire specific numbers to correct simple errors. As an example, if there is a mistake in the assignment of a toll-free number after an advertisement promoting (what should have been) the correct number has already been published, the advertiser or marketer may want to acquire directly the number that was advertised from the subscriber to whom it was mistakenly assigned. The same is true even where there is simply a printing error.⁹
- The Commission's prohibition on number transfers prevents a subscriber from directing its carrier or RespOrg to change the

Codes, FCC 98-48, 13 FCC Rcd 9058, (1998) ("[T]he Commission's own regulations prohibit the free market from resolving these concerns."); see also Joint Petition for Reconsideration of Direct Marketing Association and American Car Rental Association, filed May 4, 1998; December 13, 1999 Ex Parte letter of Direct Marketing Association to Blaise Scinto, Deputy Chief, Network Services Division, p. 2 (Commission's rules "prevent subscribers from lawfully taking steps to protect themselves by working out acceptable exchanges that serve all affected parties' needs.").

⁷ Petition for Reconsideration of Office of Advocacy, U.S. Small Business Administration, *supra*.

⁸ See Joint Petition for Reconsideration of Direct Marketing Association and American Car Rental Association, filed May 4, 1998.

⁹ April 26, 2001 Ex Parte Presentation of Direct Marketing Association.

customer of record for a toll-free number to or from the organization and its agent where the number continues to be used in furtherance of the organization's business or mission. For example, a firm that conducts surveys might reserve a vanity number, but later determine that its business needs are better served by having the teleservices company that will handle the calls serve as the customer of record.¹⁰

- The Commission's current rules stand as a bar to smooth transitions – without loss of goodwill or return on investment in advertising – in the event of a transfer of control or sale of a company's assets.¹¹

The Coalition respectfully submits that the Commission's consideration of these pleadings and issues is long overdue and would benefit greatly by a refreshed record on the experience of RespOrgs and toll free service providers under the Commission's current rules. Accordingly, the Coalition urges the Commission to issue a Public Notice to refresh the record in this docket,¹² expedite the consideration of all pending petitions for reconsideration, and stay the effectiveness of the *Bureau Letter* until such pending matters have been resolved.

II. AT&T's Petition Should Be Granted

For the reasons stated above, it is the Coalition's position that the most effective way of addressing the issues presented by AT&T is for the Commission to repeal its prohibition of toll-free number transfers and allow market-driven forces to thrive. As Chairman Powell recently noted in a speech to the Federal Communications Bar Association, "[M]arket policies have a winning record of delivering benefits to consumers that dwarfs the consumer record of government central economic planning. Thus, if you are truly committed to serving the public

¹⁰ *Id.*

¹¹ *Id.*

¹² The Commission previously refreshed the record in this docket when the record was only two years stale. See Public Notice, "Further Comments Toll Free Service Access Codes," 1997 FCC LEXIS 3503, released July 2, 1997.

interest, bet on a winner and bet on market policy.”¹³ The Commission should bet on the open markets in this instance, and allow toll-free numbers to be freely transferred.

Nevertheless, should the Commission retain this restriction, or further defer action on all pending petitions for reconsideration in this docket, the Commission can and should grant AT&T’s Petition in full to allow direct exchanges or transfers of toll free numbers in circumstances like those outlined above. The Coalition joins with AT&T and other parties who have concur that “the rule can be relaxed to address these problems without undermining the goals underlying the rule,”¹⁴ and urges the Commission to issue an order which will dispel existing uncertainty in this area.

Respectfully submitted,

COALITION FOR OPEN MARKET POLICY

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July 12, 2001

¹³ Speech of Chairman Michael K. Powell before the Federal Communications Bar Association (June 21, 2001).

¹⁴ April 26, 2001 Ex Parte Presentation of Direct Marketing Association, *supra*.

CERTIFICATE OF SERVICE

I, Eric Fishman, hereby certify that on July 12, 2001, copies of the attached Comments of Coalition for Open Market Policy were hand-delivered to the following persons at the addresses below, unless otherwise indicated.

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/s/ Eric Fishman
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**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
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